

Remarks

Restriction Requirement Under 35 U.S.C. 121

The Examiner has required that the application be restricted to one of the following inventions under 35 USC § 121:

- I. Claims 1-65 and 124-132, drawn to a method for generating an aerosol, classified in class 128, subclass 203.26.
- II. Claims 66-123, drawn to a delivery [device] for delivering an aerosol, classified in class 128, subclass 203.17.

The Examiner has indicated that the inventions are related as process and apparatus for its practice but distinct because “the process of generating an aerosol as claimed can be practiced by another a materially different apparatus” and has cited MPEP § 806.05(h). (See Office Action at page 2.). The Examiner has also stated that these inventions fall under different classification, therefore arguing that they have a separate status and thus restriction is proper.

Applicants hereby elect the invention of Group I, Claims 1-65 and 124-134, for examination.

Amendment to the Claims

Claims 1-134 are pending the application. Applicants request amendments to Claims 1, 5, 6, 11, 19, 54, 124 and 131. The amendments to the claims are merely to make the elements of the claims consistent with the preamble in that generating an aerosol does not require administration to a patient or to correct typographical errors..

No new matter has been added by these amendments to the claims.

Conclusion

In view of the comments and remarks set forth above, application respectfully requests that the Examiner accept the above amendments. The Applicants submit that the claims pending and the amended claims are in condition for allowance. Accordingly, a Notice of Allowance is earnestly solicited.

I regret that I was not available to speak with the Examiner on 7-31-03, as I was out of the office. However, in the event that there are any questions relating to this paper, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such

questions so that the prosecution of the application may be expedited.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 502731.

Respectfully submitted,



Attorney for Applicants
Elaine C. Stracker
Registration No. 43,166
Vice President, Intellectual Property
Alexza MDC
1001 East Meadow Circle
Palo Alto, CA 94303
TEL: (650) 687-3905
FAX: (650) 687-3999